



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 32918407

Date: AUG. 14, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a pianist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

## I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit the United States. The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x), including items such as awards, published material in certain media, and scholarly articles. If those standards do not readily apply to the individual’s occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

The Petitioner studied at [REDACTED] He has since performed internationally. From 2014 to 2021, the Petitioner taught at the [REDACTED] [REDACTED] The Petitioner entered the United States in July 2021 as a B-2 nonimmigrant visitor. The Petitioner stated that he intends to pursue research into “music as a means of therapy” for individuals with mental and neurological disorders, and to produce cultural events at restaurants in [REDACTED] Florida.

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially claimed to have satisfied four of these criteria, summarized below:

- (iii), Published material about the individual in professional or major media;
- (viii), Leading or critical role for distinguished organizations or establishments;
- (ix), High remuneration for services; and
- (x), Commercial success in the performing arts.

The Director concluded that the Petitioner had not met any of the criteria. On appeal, the Petitioner asserts that he meets the criteria relating to published material and leading or critical roles, and a previously unclaimed criterion relating to display at artistic exhibitions or showcases. The Petitioner does not contest the Director’s conclusions regarding the criteria relating to high remuneration and commercial success. Therefore, we conclude that the Petitioner has waived appeal for those criteria.<sup>1</sup>

Upon review of the record, we agree with the Director that the Petitioner has not satisfied the criteria claimed in the initial filing of the petition. We discuss these conclusions below.

*Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).*

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<sup>1</sup> *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff’s claims were abandoned as he failed to raise them on appeal to the AAO).

In evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media). *See generally* 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policy-manual>.

The Petitioner submitted a translated article that appeared in *Caretas* in 1985, when the Petitioner was eight years old. The article stated that the Petitioner gave a well-received performance at a municipal auditorium in [ ] Peru. Neither the article nor its English translation includes the required author credit. The Petitioner submitted an excerpt from a 1991 report called *Latin American Journalism*, which called *Caretas* a “major publication[] in Peru” and “a national weekly.”

The Petitioner also submitted a 2016 article from the “Local” section of *Del Pais*, indicating that the Petitioner performed a piano recital at a senior citizens’ home in [ ]. The Petitioner did not submit circulation information about *Del Pais*.

In a September 2023 request for evidence (RFE), the Director stated that the Petitioner had not submitted circulation data and other evidence to establish that the submitted articles appeared in professional or major trade publications or other major media, and that the submitted articles did not include the information required by the regulation. The Director stated that, if the Petitioner chose to submit more evidence, the “[a]dditional published material should be dated prior to the” petition’s filing date. The reason for this requirement is that a petitioner must meet all eligibility requirements at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). Subsequent developments cannot retroactively cause the Petitioner to have been eligible at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). The Petitioner filed the petition in June 2022.

The Petitioner’s response to the RFE did not include further evidence regarding the articles he submitted with the petition. Instead, the Petitioner submitted a printout of a screen capture from the website of a local [ ] television program. The Petitioner did not submit a transcript of the television segment, but information on the printout indicates that the segment is a two-minute story about the Petitioner’s attempt “to get [an] artist visa.” The news story appeared in [ ] 2023, more than a year after the Petitioner filed the petition and two months after the Director issued the RFE.

The Petitioner also submitted a translated screen capture reflecting television coverage of a piano recital that the Petitioner performed to mark the 76th anniversary of [ ] a district of [ ]. The Petitioner did not submit a translated transcript, and the story is not dated. Finally, the Petitioner submitted a translation of a January 2002 listing from the “Cultural” section of *La República*, providing the time, date, and address of an upcoming concert by the Petitioner.

In the denial notice, the Director stated that the Petitioner did not “establish the circulation statistics” to demonstrate that the published material appeared in professional or major trade publications or other major media. The Director also repeated that the regulation requires the published material to include the name of the author.

On appeal, the Petitioner states: “Had the submitted publications been analyzed under the correct evidentiary standard [i.e., preponderance of the evidence], it would have led to no other conclusion than that [the Petitioner] should be classified as a Pianist of extraordinary ability.” The Petitioner does not

address the Director's observation that the Petitioner had not submitted circulation data for the publications where the published material appeared. The Petitioner emphasizes the 1991 report that called *Caretas* a "major publication." That report, however, cited no source for the assertion, and the Petitioner did not otherwise establish that the report is, itself, a sufficiently authoritative source to serve as primary evidence that *Caretas* is a major publication. When the Director specifically asked for circulation figures for the submitted articles, the Petitioner instead submitted other published materials, also lacking circulation data.

The Petitioner has not submitted the required evidence and information to establish, by a preponderance of the evidence, that the published materials about him appeared in professional or major trade publications or other major media.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

Evidence of a leading role would establish that the person is (or was) a leader within a distinguished organization or establishment or a distinguished division or department thereof. Evidence of a critical role would establish that the person has contributed in a way that is of significant importance to the outcome of the activities of the organization or establishment or a division or department thereof. *See generally 6 USCIS Policy Manual, supra*, at F.2(B)(1).

Letters from persons with personal knowledge of the significance of the person's leading or critical role can be particularly helpful, so long as the letters contain detailed and probative information that specifically addresses how the person's role for the organization, establishment, division, or department was leading or critical. *Id.*

The Petitioner initially stated that he "has performed a critical role in representing the Republic of Peru and many other distinguished organizations." Peru's honorary consul in [ ] Florida, stated that the Petitioner "has participated in several events" and "has represented our country together with other extraordinary artists." The letter does not identify any specific events or assert that the Petitioner's role was leading or critical role for any identified organization or establishment.

Letters and promotional materials indicate that the Petitioner performed concerts in conjunction with the following events:

- A [ ] 2000 event in [ ] sponsored by the [ ] in Canada, "on the occasion of the [ ] in Canada";
- The [ ] 2002 "Cultural Activities" of the [ ] and
- [ ] sponsored by the [ ] in Guatemala, in 2003.

Although the Petitioner established that these events took place, or at least received advance promotion, the Petitioner did not establish that his role in any of these events was leading or critical for the organizations that held the events. The Petitioner submitted letters from officials of sponsoring organizations, attesting to the Petitioner's talent but not stating that, or explaining how, the Petitioner's roles were leading or critical for the organizations that held the events.

In the RFE, the Director stated that the evidence submitted with the petition was not sufficient to establish that the Petitioner performed in leading or critical roles for organizations or establishments with distinguished reputations. The Director asked for further information about the Petitioner's roles, including explanations of how they were leading or critical for the organizations involved.

In response, the Petitioner submitted a letter from the director of [ ] Music Program, stating that the Petitioner "has been an outstanding teacher" and "has also been coordinator of the tutoring and reinforcement system for the students of the musical language courses." [ ] named the Petitioner "Professor of Academic Excellence" in 2016. The official stated:

[The Petitioner] met and exceeded the standards required by our school since he dedicated himself not only to teaching but also trained himself obtaining the highest qualifications to be able to teach our students with cognitive disabilities such as Asperger's and autism. Thanks to his commitment, love and passion for this kind of teaching we are able to demonstrate that we are an inclusive univer[s]ity. [The Petitioner] has all the skills and competencies necessary for superior teaching in the specialty of music, having demonstrated . . . a high professional level and excellent personal characteristics.

The Petitioner also submitted letters and other information regarding various concert performances.

In denying the petition, the Director concluded that the submitted materials "do not describe a leading or critical role," and that the [ ] official did "not state how [the Petitioner] held a [leading or] critical role at his school of employment. What it does show is that he does his job well, but nothing that makes him stand out with extraordinary ability."

On appeal, the Petitioner asserts that the Director's characterization of the submitted letters "is incorrect. Not one letter used this language that he did his job well." The Petitioner maintains that the letters show that he "did in fact have leading and critical roles for organizations with distinguished reputations." But the letters do not directly assert that the Petitioner performed in leading or critical roles or explain how the Petitioner's roles were leading or critical for the organizations or their applicable divisions or departments.

The Petitioner quotes at length from the letter from the director of the [ ] Music Program, but does not show that the quoted language demonstrates the Petitioner's leading or critical role. The assertion that the Petitioner "met and exceeded the standards required by our school" attests to the quality of the Petitioner's work, which is not the same as a leading or critical role. The quoted passage ends with the sentence: "Thanks to his commitment, love and passion for this kind of teaching we are able to demonstrate that we are an inclusive univer[s]ity." This general praise for the Petitioner's dedication to his work does not point to a specific role or show how it is leading or critical for [ ]

The Petitioner submitted evidence regarding [ ] accreditation by the Western Association of Schools and Colleges Senior College and University Commission. The Petitioner did not establish that regional accreditation is evidence of a distinguished reputation. Statements from a [ ] official about the significance of that accreditation do not suffice in this regard. Furthermore, the submitted evidence does not establish that [ ] Music Program has a distinguished reputation in its own right.

The Petitioner notes that he had previously “submitted a letter from the Chairman Emeritus . . . of the [redacted] which “offers residential support and services, so that people with disabilities may live independently.” The Petitioner does not say how this letter established his leading or critical role for the Center. The letter in question was to thank the Petitioner “for agreeing to participate in [a] fund raising event” “at the [redacted] 2023 in [redacted].” The Petitioner also asserts, without citing supporting evidence, that “[t]he [redacted] is one of the finest performing arts centers in the nation.” The letter does not say, and the Petitioner does not explain, how a single concert performance amounted to a leading or critical role for either the [redacted] or for the venue that hosted the fundraiser. Furthermore, the event in question was scheduled for [redacted] 2023, nearly a year and a half after the petition’s filing date. Therefore, this performance could not establish eligibility at the time of filing. Even then, the materials the Petitioner submitted all date from before the scheduled performance date, and therefore they do not establish that the performance occurred.

The Petitioner states that he “also presented letters from distinguished musicians in the United States and in Peru attesting to his extraordinary abilities and critical role for performances internationally.” The Petitioner does not identify or quote from any of these letters to show that they refer to critical roles as claimed on appeal. Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998).

Letters in the record praise the Petitioner’s performance at several concerts, but do not assert that, or explain how, those performances amounted to leading or critical roles for organizations or establishments with distinguished reputations. The Petitioner has not established that performing onstage as a soloist or featured performer is inherently a leading or critical role for either the organization that held the performance or for the venue where the performance took place.

The Petitioner has not established, by a preponderance of the evidence, that he meets this criterion.

On appeal, the Petitioner newly claims a further criterion, relating to evidence of the display of the individual’s work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii). The Petitioner did not claim to have satisfied this criterion until he filed the appeal. The purpose of an appeal is to identify, specifically, erroneous conclusions of law or statements of fact. *See* 8 C.F.R. § 103.3(a)(1)(v). Because the Petitioner had never previously claimed to have satisfied this criterion, the Director did not discuss the criterion in the denial notice and cannot have erred with respect to it.

Furthermore, even if the Petitioner had claimed this criterion before the Director denied the petition, the Petitioner has not shown that he meets at least two other criteria, and therefore discussion of this newly-claimed criterion would not change the outcome of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten lesser criteria. As a result, we need not provide the type

of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown a degree of recognition of his work that indicates the required sustained national or international acclaim and demonstrates a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

We acknowledge the Petitioner’s submission of letters and promotional materials calling him “world renowned,” but these materials are not sufficient evidence that the Petitioner has, in fact, earned such a level of acclaim. The Petitioner has documented a small number of concert performances, but has not established that these performances have received the attention typically afforded to appearances by acclaimed musicians at the top of the field. We also acknowledge the 1991 report calling *Caretas* a major publication, but the Petitioner was eight years old when the article appeared in that magazine, with no indication that he had performed or earned recognition outside of [REDACTED]. The subsequent media coverage documented in the record appears to be predominantly local, and the employment prospects documented in the record involve restaurants and a training center. Letters in the record include high praise for the Petitioner’s skills as a pianist, but the record does not establish the national or international acclaim that the statute demands.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will therefore dismiss the appeal.

**ORDER:** The appeal is dismissed.